

Act No. 635
Public Acts of 2002
Approved by the Governor
December 22, 2002
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December 23, 2002
EFFECTIVE DATE: December 23, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Rep. Richner

ENROLLED HOUSE BILL No. 5999

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 4072 (MCL 500.4072), as amended by 1986 PA 318.

The People of the State of Michigan enact:

Sec. 4072. (1) This section shall be known as the standard nonforfeiture law for individual deferred annuities.

(2) This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by

an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, premium deposit fund, variable annuity, investment annuity, immediate annuity, a deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to a contract delivered outside this state through an agent or other representative of the company issuing the contract.

(3) Except as provided in subsection (2), for contracts issued on or after the operative date of this section, as defined in subsection (13), a contract of annuity shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the commissioner's opinion are at least as favorable to the contract holder, upon cessation of payment of consideration under the contract:

(a) That upon cessation of payment of consideration under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of a value specified in subsections (6), (7), (8), (9), and (11).

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company will pay in place of any paid-up annuity benefit, a cash surrender benefit of an amount specified in subsections (6), (7), (9), and (11). The company shall reserve the right to defer the payment of the cash surrender benefit for a period of 6 months after demand for the payment with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits.

(d) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by law of the state in which the contract is delivered, and an explanation of the manner in which the benefits are altered by the existence of additional amounts credited by the company to the contract, indebtedness to the company on the contract, or prior withdrawals from or partial surrenders of the contract.

(4) Notwithstanding the requirements of subsection (3), a deferred annuity contract may provide that if considerations have not been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before this period would be less than \$20.00 monthly, the company may at its option terminate the contract by payment in cash of the then present value of that portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit. This payment shall relieve the company of further obligation under the contract.

(5) The minimum values as specified in subsections (6), (7), (8), (9), and (11) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection:

(a) Except as otherwise provided in subdivision (b), for contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of 3% per annum of percentages of the net considerations, as defined in this subsection, paid before that time, decreased by the sum of subparagraphs (i) and (ii), and increased by any existing additional amounts credited by the company to the contract:

(i) Prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% per annum.

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) Beginning on the effective date of the amendatory act that added this subdivision and continuing until January 1, 2005 for contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of 1.5% per annum of percentages of the net considerations, as defined in this subsection, paid before that time, decreased by the sum of subparagraphs (i) and (ii), and increased by any existing additional amounts credited by the company to the contract:

(i) Prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 1.5% per annum.

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(c) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero, and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30.00 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65% of the net consideration for the first contract year and 87-1/2% of the net considerations for the second and later contract years. Notwithstanding the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than 2 times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%.

(d) For contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance, and shall be defined as for contracts with flexible considerations paid annually, except that:

(i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22-1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(ii) The annual contract charge shall be the lesser of \$30.00 or 10% of the gross annual considerations.

(e) For contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations, except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of \$75.00.

(6) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. This present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(7) For contracts that provide cash surrender benefits, the cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit arising from considerations paid before the time of cash surrender. The present value shall be calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value. However, a cash surrender benefit shall not be less than the minimum nonforfeiture amount at that time. The death benefit under contracts that provide cash surrender benefits shall be at least equal to the cash surrender benefit. As used in this subsection and except as otherwise provided in this subsection, "maturity value" means an accumulation up to the maturity date at the rate of interest guaranteed in the contract for accumulating the net considerations to determine the maturity value, but in no event less than 3% per annum, of the percentages of the net considerations, as defined in subsection (5), paid before that time, decreased by the sum of prior withdrawals from or partial surrenders of the contract accumulated at the rate of interest guaranteed in the contract for accumulating net considerations to determine the maturity value but in no event less than 3% per annum and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by excess interest previously credited by the company to the contract. Beginning on the effective date of the amendatory act that added subsection (5)(b) and continuing until January 1, 2005, as used in this subsection, "maturity value" means an accumulation up to the maturity date at the rate of interest guaranteed in the contract for accumulating the net considerations to determine the maturity value, but in no event less than 1.5% per annum, of the percentages of the net considerations, as defined in subsection (5), paid before that time, decreased by the sum of prior withdrawals from or partial surrenders of the contract accumulated at the rate of interest guaranteed in the contract for accumulating net considerations to determine the maturity value but in no event less than 1.5% per annum and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by excess interest previously credited by the company to the contract. As used in this subsection, the excess interest is the amount credited over and above the guaranteed interest.

(8) For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time before maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity. The present value shall be calculated for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts that do not provide death benefits before the commencement of annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, the present value of a paid-up annuity benefit shall not be less than the minimum nonforfeiture amount at that time.

(9) For the purpose of determining the benefits calculated under subsections (7) and (8), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be considered to be the latest date for which election shall be permitted by the contract, but shall not be later than the anniversary of the contract next following the annuitant's seventieth birthday, or the tenth anniversary of the contract, whichever is later.

(10) A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

(11) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under a contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of

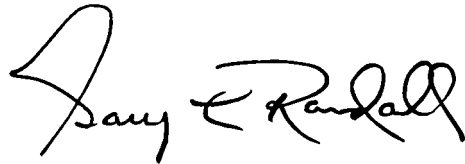
time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(12) For a contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding subsections (6), (7), (8), (9), and (11), additional benefits payable for total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of the additional benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

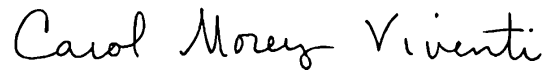
(13) After October 1, 1980, a company may file with the commissioner a written notice of its election to comply with this section after a specified date before October 1, 1982. After the filing of this notice, then on that specified date, which shall be the operative date of this section for the company, this section shall become operative with respect to annuity contracts thereafter issued by the company. If a company does not make the election, the operative date of this section for the company shall be October 1, 1982.

(14) Notwithstanding the other provisions of this section, upon cancellation of an annuity subject to an assignment under section 2080(6), the minimum nonforfeiture amount of the annuity shall be 92% of the sum of the total premiums paid by the assignor at the time of the cancellation plus interest on such premiums at an annual rate of not less than 5% or the consumer price index, whichever is greater. As used in this subsection, "consumer price index" means that term as defined in section 2080.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.